

## **REMARKS/ARGUMENTS**

Upon careful and complete consideration of the Office Action dated April 6, 2004, applicant has amended the claims which, when considered in conjunction with the comments herein below, are deemed to place the present application into condition for allowance. Favorable reconsideration of this application, as amended, is respectfully solicited.

Before addressing the issues raised in the Office Action, applicant wishes to point out the following regarding the amendments made to the claims. Claims 1-67 were originally pending in this application. Claims 1-6, 9, 11-17, 20-29, 38-43 and 66 have been amended, claims 46-65 and 67 have been cancelled and new claims 68-115 have been added.

Claim 1 has been amended to recite a method of producing a 'food product'. This amendment finds support in the specification as originally filed at least at page 8, line 16 to page 9, line 2 and in original claims 65-67. Claim 1 has also been amended to recite the step of "mixing a gluten substitute food ingredient with other food ingredients to form a first mixture and processing the first mixture to produce the food product." This amendment is supported by the specification as originally filed at least at page 2, lines 20-21, page 3, lines 21-24 and page 8, line 16 to page 9, line 2, in Examples 5-7 and in original claim 66. Additionally, claim 1 has been amended to clarify that the gluten substitute food ingredient is "an aerated mass or a ground thereof, wherein the aerated mass is produced by a process that comprises heating a second mixture comprising a starch, an edible fat, an edible protein and a liquid for a time and under conditions sufficient to form the aerated mass." This amendment finds support in the specification as originally filed at least at page 2, line 29 to page 3, line 1, page 3, lines 10-12, page 4, lines 19-25, in Examples 1-4 and in original claim 1. Claim 1 has also been amended to replace the term "said" with a synonym "the".

Claims 2-6, 9, 11-17, 20-29, 33, 38-43 and 66 have been amended to conform them to the language of amended claim 1.

Claim 66 has been amended to clarify that the claimed method is suitable for producing “a bakery product,” which is implicitly supported by the language of original claim 66 and Examples 5-7.

New claim 68 is dependent on amended claim 1 and further defines the food product as a bakery product. This claim finds support in the specification as originally filed at least at page 8, lines 16-22 and in original claims 64-66.

New claim 69 is dependent on new claim 68 and further defines the bakery product as being selected from the group consisting of bread, buns, rolls, bagels, pizza base, pies, pastry, pancakes, muffins, crumpets, doughnuts, cakes, batter, biscuits, cake mixes, dumplings, and pasta. This claim is supported in the originally filed specification at least at page 8, lines 20-22.

New claim 70 is dependent on amended claim 1 and further defines the food product as being selected from the group consisting of sauces, soups, pastes, mayonnaise, dressings, snack foods, deserts, gravies, processed meats including sausages, salamis, hot dogs as well as canned and re-constituted pet foods. This claim finds support in the specification as originally filed at least at page 8, line 23 through page 9, line 2.

New claims 70-115 depend from amended claim 66 and recite the same limitations as claims 2-45, respectively.

For the foregoing reasons, Applicant respectfully asserts that the amendments and additions made herein are fully supported by the specification and do not include new subject matter.

Returning to the present Office Action, Claims 63 and 65 were rejected for being indefinite and improper under 35 USC § 101. As noted above, these claims have been deleted, making the rejection moot.

The Office Action then rejected claims 1-67 under either 35 USC § 102(b) or § 103(a) as allegedly being anticipated by or being unpatentable over U.S. Patent No. 4,451,491 to Trop et al. (hereinafter referred to as “Trop et al.”).

Trop et al. disclose a mix for the preparation of bread and cake-type products comprising a non-wheat-based starch, an emulsified fat, powdered whipping agent and water, wherein the products are produced in the substantial absence of wheat flour. However, Applicant respectfully submits that Trop et al. do not teach or suggest the use of a pre-prepared compound that results from the heating of starch, an edible fat, an edible protein and a liquid to form an aerated mass, which compound may serve as a substitute for gluten in the preparation of food products including bakery products. The Examiner will observe that the claims have been amended to recite a method of producing a food product, which method comprises the steps of :

mixing a gluten substitute food ingredient with other food ingredients to form a first mixture; and

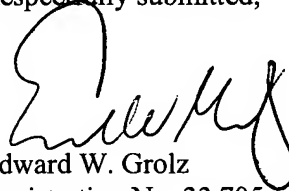
processing the first mixture to produce the food product, wherein the gluten substitute food ingredient is an aerated mass or ground thereof and wherein the aerated mass is produced by a process which comprises heating a second mixture comprising a starch, an edible fat, an edible protein and a liquid for a time and under conditions sufficient to form an aerated mass.

Thus, the amended claims clarify that the gluten substitute food ingredient is pre-prepared and is combined as a unitary ingredient with other food ingredients to form a mixture, which is subsequently processed to produce a food product. By contrast, Trop et al. do not teach or suggest the use of a pre-prepared compound, which results from the heating of starch, an edible fat, an edible protein and a liquid to form an aerated mass, as a separate ingredient that serves as a substitute for gluten and that is mixed with other food ingredients and processed to produce food products, as required by revised claim 1. Further, Trop et al.

neither teach nor suggest the desirability of using the food products disclosed in that citation as substitutes for gluten in the preparation of other food products. The reference only deals with the production of gluten-free bakery products, not in the provision of any substitute for gluten, which could be used subsequently for preparing food products. Accordingly, a person of skill in the art would not be motivated by Trop et al. to use the bakery products disclosed in that citation for any purpose other than for eating. Applicant respectfully urges the Examiner, therefore, to reconsider and withdraw the rejections of the claims pursuant to 35 USC § 102(b) and § 103(a), respectively.

Finally, it is further submitted that all the claims in the application as presently submitted contain patentable subject matter and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward W. Grolz', written over a horizontal line.

Edward W. Grolz  
Registration No. 33,705

SCULLY, SCOTT, MURPHY & PRESSER  
400 Garden City Plaza  
Garden City, New York 11530  
(516) 742-4343

EWG/nd